

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

HITACHI CONSUMER ELECTRONICS * Civil Docket No.
* 2:10-CV-260
VS. * Marshall, Texas
*
* April 12, 2013
TOP VICTORY ELECTRONICS * 11:30 A.M.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

1 THE COURT: Be seated, please.

2 All right. Mr. Shadden, would you bring
3 in the jury, please?

4 COURT SECURITY OFFICER: All rise for the
5 jury.

6 (Jury in.)

7 THE COURT: Be seated, ladies and
8 gentlemen.

9 Ladies and Gentlemen of the Jury, you
10 have now heard the evidence in this case. In a few
11 minutes, I will instruct you on the law that you must
12 apply.

13 First, let me go over some of the
14 uncontested facts. These facts are not disputed between
15 the parties, and you should consider these facts as part
16 of the evidence in this case.

17 1. Plaintiff Hitachi Consumer
18 Electronics Company, Limited, is a corporation organized
19 under the laws of Japan with its principal place of
20 business at 2-1 Otemachi 2-chome Chiyoda-ku, Tokyo,
21 Japan. Hitachi Consumer Electronics Company, Limited,
22 is a wholly owned subsidiary of Hitachi, Limited (Tokyo,
23 Japan).

24 2. Defendant Top Victory Electronics
25 (Taiwan) Company, Limited, is a corporation organized

1 under the laws of Taiwan with its principal place of
2 business at 10F, No. 230, Liancheng Road, Zhongde City,
3 Taipei County, Taiwan.

4 3. Defendant TPV International (USA),
5 Inc., is a corporation organized under the laws of
6 California with its principal place of business at 3737
7 Executive Center Drive, Suite 261, Austin, Texas, 78731,
8 and with a registered agent at 350 North St. Paul
9 Street, Suite 2900, Dallas, Texas, 75201.

10 4. Defendant Envision Peripherals, Inc.,
11 is a corporation organized under the laws of California
12 with its principal place of business at 47490 Seabridge
13 Drive, Fremont, California, 94538, and with a registered
14 agent at 350 North St. Paul Street, Suite 2900, Dallas,
15 Texas, 75201.

16 5. Defendant Top Victory Electronics
17 (Fujian) Company, Limited, is a corporation organized
18 under the laws of the People's Republic of China with
19 its principal place of business at Shangzheng Yuanhong
20 Road, Fuqing City, Fujian Province, China.

21 6. Defendant TPV Electronics (Fujian)
22 Company, Limited, is a corporation organized under the
23 laws of the People's Republic of China with its
24 principal place of business at Shangzheng, Yuanhong
25 Road, Fuqing City, Fujian Province, China.

1 7. Defendant TPV Technology, Limited, is
2 a corporation organized under the laws of Bermuda with
3 its principal place of business at Suite 1023, Ocean
4 Centre, Harbour City, Kowloon, Hong Kong.

5 8. Plaintiffs are referred to
6 collectively in these instructions and the jury verdict
7 form as Hitachi.

8 9. Defendants are referred to
9 collectively in these instructions and the jury form --
10 the jury verdict form as TPV.

11 10. -- and I note some of you -- I'll
12 stop for a minute. I note some of you are making notes.
13 Each of you will have a written copy of these
14 instructions to take with you to the jury room, so you
15 don't need to make notes. You can just concentrate and
16 listen at this time.

17 All right. 10. Hitachi Consumer
18 Electronics Company, Limited, is an assignee and owner
19 of all right, title, and interest in and to U.S. Patent
20 No. 5,502,497.

21 11. U.S. Patent No. 5,502,497 was issued
22 on March 26th, 1996.

23 12. The asserted claims of United States
24 Patent No. 5,502,497 have a priority date of August the
25 28th, 1991, pursuant to 35 United States Code Section

1 119, and an effective United States filing date of
2 August 28th, 1992, pursuant to 35 United States Code
3 Section 120.

4 13. Hitachi Consumer Electronics
5 Company, Limited, is the assignee and owner of all
6 right, title, and interest in and to United States
7 Patent No. 7,286,310.

8 14. United States Patent No. 7,286,310
9 issued on October 23rd, 2007.

10 15. Hitachi Consumer Electronics
11 Company, Limited, is the assignee and owner of all
12 right, title, and interest in and to United States
13 Patent 8,009,375.

14 16. United States Patent No. 8,009,375
15 issued on August the 30th, 2011.

16 17. The asserted claims of United States
17 Patent Nos. 7,286,310 and 8,009,375 each have a priority
18 date of July 20th, 1990, pursuant to 35 United States
19 Code Section 119, and each have an effective United
20 States filing date of July the 8th, 1991, pursuant to 35
21 United States Code Section 120.

22 18. Hitachi Consumer Electronics,
23 Company, Limited is the assignee and owner of all right,
24 title, and interest in and to United States patent
25 No. 6,549,243.

1 19. United States Patent No. 6,549,243
2 issued on April the 15th, 2003.

3 20. The asserted claims of United States
4 Patent No. 6,549,243 have a priority date of August 21,
5 1997, pursuant to 35 United States Code Section 119 and
6 an effective United States filing date of August 18,
7 1998.

8 21. TPV received a letter from Hitachi
9 and identified United States Patent Nos. 5,502,497,
10 6,549,243, and 7,286,310 on April 28th, 2009.

11 22. Hitachi filed suit against TPV
12 alleging infringement of U.S. Patent Nos. 5,502,497,
13 6,549,243, and 7,286,310 on July 22nd, 2010.

14 23. TPV received notice of U.S. Patent
15 No. 8,009,375, pursuant to 35 United States Code
16 Section 287(a) on May the 3rd, 2012.

17 24. The TPV televisions accused of
18 infringement by Hitachi were either imported into the
19 United States by TPV or sold to customers who are
20 believed by TPV to have imported them into the United
21 States.

22 I will now instruct you on the law that
23 you must apply. It is your duty to follow the law as I
24 give it to you. However, you, the jury, are the sole
25 judges of the facts. Accordingly, do not consider any

1 statement that I have made during the trial or make in
2 these instructions as an indication that I have any
3 opinion about the facts of this case.

4 After I give you these instructions, the
5 attorneys will make their closing arguments. Statements
6 and arguments of the attorneys are not evidence and are
7 not instructions on the law. They are intended only to
8 assist you in understanding the evidence and the
9 parties' contentions.

10 A verdict form has been prepared for you.
11 You will take this form to the jury room, and when you
12 have reached a unanimous agreement as to your verdict,
13 you will have your foreperson fill in the blanks in that
14 verdict form, date it, and sign it.

15 Each answer -- excuse me -- answer each
16 question in the verdict form from the facts as you find
17 them to be. Do not decide who you think should win and
18 then answer the questions to reach that result. Your
19 answers and your verdict must be unanimous.

20 In determining whether any fact has been
21 proved in this case, you may, unless otherwise
22 instructed, consider the testimony of all witnesses,
23 regardless of who may have called them, and all exhibits
24 received into evidence, regardless of who may have
25 produced them. You may also consider any stipulations

1 received into evidence.

2 By the Court allowing testimony or other
3 evidence to be introduced over the objection of an
4 attorney, the Court did not indicate any opinion as to
5 the weight or effect of such evidence. As stated
6 before, you are the sole judges of the credibility of
7 all the witnesses and of the weight and effect, if any,
8 to be given to all of the evidence.

9 When the Court sustained an objection to
10 a question addressed to a witness, you must disregard
11 the question entirely, and you may draw no inference
12 from its wording or speculate about what the witness
13 would have said, if he or she had been permitted to
14 answer.

15 At times during the trial, it was
16 necessary for the Court to talk to the lawyers here at
17 the bench out of your hearing or by calling a recess and
18 talking to them while you were out of the courtroom all
19 together.

20 We met because often during a trial
21 something comes up that does not involve the jury. You
22 should not speculate on what was said during such
23 discussions out of your presence.

24 When a party has the burden of proof on
25 any claim or defense by a preponderance of the evidence,

1 it means the evidence must persuade you that the claim
2 or defense is more probable than not.

3 You should base your decision on all of
4 the evidence, regardless of which party presented it.

5 When a party has the burden of proving
6 any claim or defense by clear and convincing evidence,
7 it means the evidence has persuaded you that the claim
8 or defense is highly probable. Such evidence requires a
9 higher standard of proof than proof by a preponderance
10 of the evidence.

11 Again, you should base your decision on
12 all of the evidence, regardless of which party presented
13 it.

14 Evidence may be direct or circumstantial.

15 Direct evidence is direct proof of a
16 fact, such as testimony by a witness about what that
17 witness personally saw or heard or did. Circumstantial
18 evidence is proof of one or more facts from which you
19 can find another fact. You should consider both kinds
20 of evidence. The law makes no distinction between the
21 weight to be given to either direct or circumstantial
22 evidence. It is for you to decide how much weight to
23 give to any evidence.

24 By way of example, if you wake up in the
25 morning and see the sidewalk is wet, you may find from

1 that fact that it rained during the night. However --
2 however, other evidence, such as a turned-on garden
3 hose, may provide a different explanation for the
4 presence of the water on the sidewalk.

5 Therefore, you -- before you decide that
6 a fact has been proved by circumstantial evidence, you
7 must consider all of the evidence in the light of
8 reason, experience, and common sense.

9 Certain exhibits shown to you during the
10 trial were illustrations. We call these types of
11 exhibits demonstrative exhibits or demonstratives.

12 Demonstratives are a party's description,
13 picture, or model to describe something involved in this
14 trial. If your recollection of evidence differs from
15 the demonstratives, you should rely on your
16 recollection.

17 Dem -- demonstratives are sometimes
18 called jury aids. Demonstratives themselves are not
19 evidence, but a witness' testimony concerning a
20 demonstrative exhibit is evidence.

21 In deciding the facts in this case, you
22 may have to decide which testimony to believe and which
23 testimony not to believe. You may -- you may believe
24 everything a witness says or part of it or none of it.

25 Proof of a fact does not necessarily

1 depend on the number of witnesses who testify about it.

2 In considering the testimony of any
3 witness, you may take into account:

4 (1) the opportunity and ability of the
5 witness to see or hear or know the things testified to;

6 (2) the witness' memory;

7 (3) the witness' manner while testifying;

8 (4) the witness' interest in the outcome
9 of the case or any bias or prejudice;

10 (5) whether other evidence contradicted
11 the witness' testimony;

12 (6) the reasonableness of the witness'
13 testimony in light of all of the evidence; and

14 (7) any other factors that bear on
15 believability.

16 The weight of the evidence as to a fact
17 does not necessarily depend on the number of witnesses
18 who testify about it.

19 Certain testimony was presented to you
20 through a deposition. As I mentioned during my
21 preliminary instructions, a deposition is the sworn,
22 recorded answers to questions asked of a witness in
23 advance of the trial. Under some circumstances, if a
24 witness cannot be present to testify from the witness
25 stand, that witness' testimony -- testimony may be

1 presented under oath in the form of a deposition.

2 Sometime before trial, attorneys
3 representing the parties in this case questioned this
4 witness under oath. A court reporter and videographer
5 were present and recorded the testimony.

6 The deposition testimony is entitled to
7 the same consideration and weighed and otherwise
8 considered by you insofar as possible in the same way as
9 if the witness had been present and had testified from
10 the witness stand in court.

11 For -- for deposition testimony that was
12 read rather than presented by video, do not place any
13 significance on the behavior or tone of voice of the
14 person who read the questions and answers.

15 When knowledge of a technical subject
16 matter may be helpful to the jury, a person who has
17 special training or experience in that technical
18 field -- he is called an expert witness -- he or she is
19 called an expert witness -- is permitted to state his or
20 her opinion on those technical matters. However, you
21 are not required to accept that opinion. As with any
22 other witness, it is up to you to decide whether or not
23 to rely upon it.

24 Hitachi contends that TPV makes, uses,
25 offers to sell, sells, or imports products that infringe

1 Claims 4 and 5 of the '243 patent, Claim 7 of the '310
2 patent, and Claims 26 and 30 of the '375 patent and
3 Claims 15 and 16 of the '497 patent.

4 TPV denies that it -- that it infringes
5 the asserted claims. TPV also contends that all of the
6 asserted claims of the '310 patent and the '375 patent
7 are invalid because they are either anticipated by or
8 rendered obvious by one or more prior art references.

9 Invalidity is a defense to patent
10 infringement. Therefore, even though the Patent and
11 Trademark Office has allowed the asserted claims, you,
12 the jury, must decide whether those claims are invalid.

13 Your job is to decide whether the
14 asserted claims have been infringed and whether any of
15 the asserted claims are invalid. If you decide that any
16 claim of the patent has been infringed and is not
17 invalid, you will then need to decide any damages to be
18 awarded to Hitachi as compensation for the infringement.

19 You will also need to decide whether the
20 infringement was willful. If you decide that any
21 infringement was willful, that decision should not
22 affect any damage award that you make.

23 I will take willfulness into account
24 later.

25 I will now instruct you on the specific

1 rules you must follow to determine whether Hitachi has
2 proven that TPV has infringed one or more of the patent
3 claims involved in this case.

4 You must decide whether TPV has made,
5 used, sold, or offered for sale within the United States
6 or imported into the United States a product covered by
7 the asserted claims. You must compare each claim to
8 TPV's products to determine whether every requirement of
9 the claim is included in or performed by the accused
10 product.

11 To prove literal infringement of a claim,
12 Hitachi must prove that it is more probable than not
13 that TPV's product includes or performs every
14 requirement or step in Hitachi's patent claims. If a
15 product omits any requirement or step recited in an
16 asserted patent claim, that product does not infringe
17 that claim.

18 An accused product that sometimes but not
19 always operates in -- in an infringing way, nonetheless
20 infringes.

21 For literal infringement, Hitachi is not
22 required to prove that TPV intended to infringe or knew
23 of the patent.

24 I have defined certain words and phrases
25 in the patent claims. For any words in the claims for

1 which I have not provided you with a definition, you
2 should apply their plain and ordinary meaning as they
3 would be understood by a person of ordinary skill in the
4 art.

5 My interpretation of the language should
6 not be taken as an indication that I have a view
7 regarding the issues of infringement and validity. The
8 decisions regarding infringement and validity are yours
9 to make.

10 During your deliberations you must apply
11 these meanings:

12 For the '243 patent:

13 (1) Video signal formats shall mean the
14 number of scan lines and whether the scan lines are
15 progressive or interlaced.

16 (2) Selecting one video processor section
17 of said video processor sections to perform video
18 processing of said video signal shall mean selecting one
19 or more video processor sections of said video processor
20 sections to perform video processing of said video
21 signal.

22 For the '497 patent:

23 Broadcast system standard shall mean a
24 specified set of technical parameters describing how a
25 program is broadcast.

1 The beginning, or preamble, of some
2 asserted claims uses the word comprising. Comprising
3 means including or containing but not limited to.

4 That is, if you decide that TPV's product
5 includes all the requirements in that claim, the claim
6 is infringed. This is true even if the accused product
7 includes components in addition to those requirements.

8 For example, a claim to a table
9 comprising a tabletop, legs, and glue would be
10 infringed -- infringed by a table that includes a
11 tabletop, legs, and glue even if the table also includes
12 wheels on the table's legs.

13 So far, my instructions on infringement
14 have applied to what are known as independent claims.

15 The parties also -- excuse me.

16 The patents also contain dependent
17 claims. Each dependent claim refers to an independent
18 claim. A dependent claim includes each of the
19 requirements of the independent claim to which it refers
20 and one or more additional requirements.

21 In order to find infringement of a
22 dependent claim, you must first determine whether the
23 independent claim has been infringed.

24 If you decide that the independent claim
25 has not been infringed, then the dependent claim cannot

1 have been infringed.

2 If you decide that the independent claim
3 has been infringed, you must then separately determine
4 whether each additional requirement of the dependent
5 claim has also been included in the accused product. If
6 each additional requirement has been included, then the
7 dependent claim has been infringed.

8 Hitachi must prove by a preponderance of
9 the evidence that a patent claim has been infringed.

10 Some patent claim requirements may
11 describe a, quote, means, unquote, for performing a
12 function rather than describing the structure that
13 performs the function.

14 For example, let me say that a patent
15 describes a table in which the legs are glued to the
16 tabletop.

17 One way an inventor may claim the table
18 is to require the tabletop, four legs, and glue between
19 the legs and the tabletop.

20 Another way to claim the table is to
21 require the tabletop and legs, but instead of stating
22 glue, the inventor states a means for securing the legs
23 to the tabletop.

24 This second type of claim requirement is
25 called a means-plus-function requirement. It describes

1 a means for performing the function of securing the legs
2 to the tabletop rather than requiring the glue.

3 When a claim requirement is in
4 means-plus-function form, it covers the structures
5 described in the patent specification for performing the
6 function stated in the claim and also any structure
7 equivalent to the described structures.

8 In my example, the claim covers a table
9 using glue to secure the legs to the tabletop, as
10 described in the patent, and any equivalent structure to
11 glue that performs the function of securing the legs to
12 the tabletop.

13 Claims 15 and 16 of the '497 patent
14 include means-plus-function requirements. In
15 instructing you about the meaning of a
16 means-plus-function claim requirement, I will tell you
17 first that the function that is performed, and second,
18 the structure disclosed in the patent specification that
19 corresponds to that function.

20 To establish direct infringement of a
21 claim that includes a means-plus-function requirement,
22 Hitachi must prove two things:

23 (1) The relevant structure in the accused
24 device performs the identical function I identified;

25 And (2) the accused device employs a

1 structure identical or equivalent to the structure
2 described in the patent.

3 Where the structure in the accused device
4 and the structure disclosed in the patent specification
5 are not identical, Hitachi has the burden of proving by
6 a preponderance of the evidence that the relevant
7 structure in the accused device, as I have defined it
8 for you, is equivalent to the disclosed structure in the
9 patent.

10 Two structures are equivalent if a person
11 of ordinary skill in the art would consider the
12 differences between them to be insubstantial for
13 performing the required function.

14 One way to determine this is to look at
15 whether or not the accused structure performs the
16 identical function in substantially the same way to
17 achieve substantially the same result.

18 Another way is to consider whether people
19 of ordinary skill in the art believed that the structure
20 of the accused product and the structure in the patent
21 were interchangeable at the time the patent was issued
22 by the PTO.

23 To be a structural equivalent for a means
24 requirement, an accused structure must have existed at
25 the time the asserted claim issued.

1 Claim 13 of the '497 patent from which
2 Claims 15 and 16 depend includes the phrase, quote,
3 reception means for receiving a broadcast program
4 picture and control information which are broadcast in
5 accordance with a predetermined format, said control
6 information specifying a broadcast system standard,
7 close quote.

8 This function -- the function, rather,
9 that is performed is, quote, receiving a broadcast
10 program picture and control information, said control
11 information specifying a broadcast system standard,
12 close quote.

13 The corresponding structure in the patent
14 specification is, quote, a reception module, close
15 quote.

16 Claim 13 of the '497 patent from which
17 Claims 15 and 16 depend also includes the phrase, quote,
18 broadcast content processing means for controlling and
19 displaying said broadcast program picture in accordance
20 with said broadcast system standard specified by said
21 control information received by said reception means,
22 close quote.

23 The function that is performed is, quote,
24 controlling and displaying said broadcast program
25 picture in accordance with said broadcast -- broadcast

1 system standard specified by said control information
2 received by -- by said reception means, close quote.

3 The corresponding instruction in the patent
4 specification is, quote, a reception controller, close
5 quote.

6 Claim 15 of the '497 patent includes the
7 phrase, quote, wherein said reception means receives a
8 plurality of broadcast program pictures multiplexed in a
9 time division manner, close quote.

10 The function that is performed is, quote,
11 receives a plurality of broadcast program pictures
12 multi -- multiplexed in a time-division manner, close
13 quote.

14 The corresponding structure in the patent
15 specification is, quote, a reception module, close
16 quote.

17 Claim 15 of the '497 patent includes the
18 phrase, quote, control means for specifying said
19 time-division multiplexing system in accordance with
20 said multiplex information item included in said control
21 information received by said reception means, close
22 quote.

23 The function that is performed is, quote,
24 specifying said time-division multiplexing system in
25 accordance with said multiplex information item included

1 in said control information received by said reception
2 means, close quote.

3 The corresponding structure in the patent
4 specification is, quote, a reception controller, close
5 quote.

6 Claim 15 of the '497 patent includes the
7 phrase, quote, a separation means for selecting a
8 subject broadcast program picture to be displayed and
9 separating said subject broadcast picture -- program
10 picture in accordance with said time-division
11 multiplexing system specified by said control means,
12 close quote.

13 The function that is performed is, quote,
14 selecting a subject broadcast program picture to be
15 displayed and separating said subject broadcast program
16 picture in accordance with said time-division
17 multiplexing system specified by said control means,
18 close quote.

19 The corresponding structure in the patent
20 specification is, quote, a signal separator, close
21 quote.

22 Claim 15 of the '497 patent includes the
23 phrase, quote, display means for displaying a subject
24 broadcast program picture separated by said separation
25 means, close quote.

1 The function that is performed is, quote,
2 displaying a subject broadcast program picture separated
3 by said separation means, close quote.

4 The corresponding structure in the patent
5 specification is, quote, a display unit, close quote.

6 Claim 16 of the '497 patent includes the
7 phrase, quote, control means operates to display said
8 contents of said plurality of broadcast program pictures
9 indicated by said content information items on said
10 display means on a basis of a received said control
11 information, operates to accept selection of a subject
12 broadcast program picture to be displayed, and operates
13 to display a selected subject broadcast program picture
14 or said display means, close quote.

15 The function that is performed is, quote,
16 operates to display said contents of said plurality of
17 broadcast program pictures indicated by said content
18 information items on said display means on a basis of a
19 received said control information, operates to accept
20 selection of a subject broadcast program picture to be
21 displayed and operates to display a selected said
22 subject broadcast program picture on said display means,
23 close quote.

24 The corresponding structure in the -- in
25 the patent specification is, quote, a reception

1 controller, close quote.

2 Hitachi alleges that TPV is liable for
3 infringement by actively inducing their customers to
4 directly infringe at least one patent. As with direct
5 infringement, you must determine whether there has been
6 active inducement on a claim-by-claim basis.

7 TPV is liable for active inducement of a
8 claim only if Hitachi proves by a preponderance of the
9 evidence that:

10 (1) the acts are actually carried out by
11 at least one of TPV's customers and directly infringe
12 the claim;

13 And (2) TPV took action during the time
14 the patent was in force intending to cause the
15 infringing acts by TPV's customers;

16 And (3) TPV was aware of the patent and
17 knew that the acts, if taken, would constitute
18 infringement of the patent or TPV believed there was a
19 high probability that the acts, if taken, would
20 constitute infringement of the patent but deliberately
21 avoided confirming that belief.

22 In order to establish active inducement
23 of infringement, it is not sufficient that TPV's
24 customers themselves directly infringe the patent, nor
25 is it sufficient that TPV was aware of the acts by TPV's

1 customers that alleged constitute the direct
2 infringement. Rather, you must find that TPV
3 specifically intended at least one of their customers to
4 infringe at least one patent or that TPV believed there
5 was a high probability that at least one of TPV's
6 customers would infringe at least one patent, but
7 remained willfully blind to the infringing nature of
8 TPV's customers' acts in order to find inducement of
9 infringement.

10 If you find by a preponderance of the
11 evidence that TPV infringed the '497, the '243, or the
12 '310 patent, then you must determine if this
13 infringement was willful.

14 The issue of willful infringement relates
15 to the amount of damages Hitachi is entitled to recover
16 in this lawsuit. If you decide that TPV willfully
17 infringed the '497, the '243, or the '310 patent, then
18 it is my job -- it is my job to decide whether or not to
19 award increased damages to Hitachi. You should not take
20 this factor into account in assessing the damages, if
21 any, to be awarded to Hitachi.

22 To prove willful infringement, Hitachi
23 must persuade you by clear and convincing evidence that
24 before the filing date of the complaint, TPV acted
25 recklessly.

1 You must determine whether Hitachi proved
2 by clear and convincing evidence that the risk of
3 infringement was known or so obvious that it should have
4 been known to TPV. In deciding whether TPV had this
5 state of mind, you should consider all facts surrounding
6 the allege -- the alleged infringement, including but
7 not limited to the following:

8 (1) whether or not TPV acted in a manner
9 consistent with the standards of commerce for its
10 industry;

11 (2) whether or not TPV intentionally
12 copied a product of Hitachi covered by one or more
13 claims of the '497, '243, or '310 patent;

14 (3) whether or not TPV made a good-faith
15 effort to avoid infringing the '497, '243, or '310
16 patent, for example, whether TPV attempted to design
17 around the '497, '243, or '310 patent;

18 (4) whether or not TPV tried to cover up
19 their infringement; and

20 (5) whether or not there is a reasonable
21 basis to believe that TPV did not infringe or had a
22 reasonable defense to infringement.

23 Patent invalidity is a defense to patent
24 infringement. Even though the PTO Examiner has allowed
25 the claims of a patent, you have the ultimate

1 responsibility for deciding whether the claims of the
2 patent are valid.

3 I will now instruct you on the invalidity
4 issues you should consider. As you consider these
5 issues, remember that TPV bears the burden of proving by
6 clear and convincing evidence that the claims are
7 invalid.

8 TPV contends that Claim 7 of the '310
9 patent is invalid because the inventions claimed are not
10 new. For a claim to be invalid because it is not new,
11 all of its requirements must have been described in a
12 single previous publication or patent that predates the
13 claimed invention.

14 In patent law, such previous publication
15 or patent is called a prior art reference. If a patent
16 claim is not new, we say it is anticipated by a prior
17 art reference. TPV must prove by clear and convincing
18 evidence that the claim was anticipated.

19 To anticipate a claim, each and every
20 element of the claim must be present in a single item of
21 prior art and arranged or combined in the same way as
22 recited in the claim. You may not combine two or more
23 items of prior art to find anticipation.

24 Whether or not the Patent and Trademark
25 Office may not have evaluated certain materials which

1 Defendant now claims constitute prior art before the PTO
2 granted the patents-in-suit is an issue you should
3 consider.

4 However, in considering this, you must
5 consider whether any such evidence is materially new and
6 was publicly known at the time. And if so, consider
7 when such determining whether the -- whether an
8 invalidity defense has been proven by clear and
9 convincing evidence.

10 Prior art differing from the prior art
11 considered by the PTO may, but does not always, carry
12 more weight than the prior art considered by the PTO.

13 The disclosure in the prior art reference
14 does not have to be in the same words as the claim, but
15 all of the requirements of the claim must be that single
16 reference, either stated or necessarily implied, so that
17 someone of ordinary skill looking at that one reference
18 would be able to make and use at least one embodiment of
19 the claimed invention.

20 Anticipation also occurs when the claimed
21 invention inherently, in other words, necessarily
22 results from practice of what is disclosed in the
23 written reference, even if the inherent disclosure was
24 unrecognized or unappreciated by one of ordinary skill
25 in the field of the invention.

1 Here is a list of the ways that TPV can
2 show that a patent claim was not new:

3 If the claimed invention was already
4 publicly known by others in the United States before
5 July the 20th, 1990 for the '310 patent;

6 If the claimed invention was already
7 patented or described in a printed publication anywhere
8 in the world before July the 20th, 1990 for the '310
9 patent. To qualify as a prior art reference, a printed
10 publication must be at least reasonably accessible to
11 those entered in the field, even if it's difficult to
12 find;

13 If the claimed invention was already
14 described in an issued United States patent that was
15 based on a patent application before -- filed before
16 July the 20th, 1990 for the '310 patent;

17 If a patent claim is not new as explained
18 above, you must -- you must find that the claim is
19 invalid.

20 TPV may prove that the asserted claims
21 are invalid by showing by clear and convincing evidence
22 that each such claim failed to meet one of several
23 statutory provisions in the patent laws. These
24 provisions are called statutory bars.

25 For a patent claim to be invalid because

1 of a statutory bar, all of its requirements must have
2 been present in one prior art reference dated more than
3 one year before the effective filing date of the patent
4 application.

5 TPV can show that the patent application
6 was not timely filed (1) if the claimed invention was
7 already patented or described in a printed publication
8 anywhere in the world before July the 8th, 1990 for the
9 '310 patent. To qualify as a prior art reference, a
10 printed publication must be at least reasonably
11 accessible to those interested in the field, even if it
12 is difficult to find.

13 For a claim to be invalid because of a
14 statutory bar, all of the claimed requirements must have
15 been either (1) disclosed in a single prior art
16 reference; or (2) implicitly disclosed in a single prior
17 art reference as viewed by one of ordinary skill in the
18 field of the invention. The disclosure in a reference
19 does not have to be in the same words as the claim, but
20 all the requirements of the claim must be described in
21 enough detail or necessarily implied by or inherent in
22 the reference to enable someone of ordinary skill in the
23 field of the invention looking at the reference to make
24 and use at least one embodiment of the claimed
25 invention.

1 A prior art reference also invalidates a
2 patent claim when the claimed invention necessarily
3 results from practice of the subject of the prior art
4 reference, even if the result was unrecognized and
5 unappreciated by one of ordinary skill in the field of
6 the invention.

7 If you find a patent claim failed to meet
8 a statutory bar, you must find the patent claim invalid.

9 In this case, TPV contends that Claims 26
10 and 30 of the '375 patent are invalid as obvious. A
11 patent claim is invalid if the claimed invention would
12 have been obvious to a person of ordinary skill in the
13 field of the invention at the time the application was
14 filed.

15 This means that even if all of the
16 requirements of the claim cannot be found in a single
17 prior art reference that would anticipate the claim or
18 constitute a statutory bar to that claim, a person of
19 ordinary skill in the field of the invention who knew
20 about all of the prior art would have come up with the
21 claimed invention.

22 But a patent claim composed of several
23 requirements is not proved obvious merely by
24 demonstrating that each of its requirements was
25 independently known in the prior art.

1 Although common sense directs one to look
2 with care at a patent application that claims as
3 innovation the combination of known requirements
4 according to their established functions to produce a
5 predictable result, it can be important to identify a
6 reason that would have prompted a person of ordinary
7 skill in the relevant field to combine the requirements
8 in a way the claimed new invention does.

9 This is so because inventions in most, if
10 not all instances, rely upon building blocks long since
11 uncovered and claimed discoveries almost of necessity
12 will be combinations of what in some sense is already
13 known.

14 Accordingly, you may evaluate whether
15 there was some teachings, suggestion, or motivation to
16 arrive at the claimed invention before the time of the
17 claimed invention, although proof of this is not a
18 requirement to prove obviousness.

19 Teachings, suggestions, and motivations
20 may be found in written references, including the prior
21 art itself. However, teachings, suggestions, and
22 motivations may also be found within the knowledge of a
23 person of ordinary skill in the art, including
24 inferences and creative steps that a person of ordinary
25 skill in the art would employ.

1 Additionally, teachings, suggestions, and
2 motivations may be found in the nature of the problem
3 solved by the claimed invention, or any need or problem
4 known in the field of the invention at the time of and
5 addressed by the invention.

6 TPV must provide more than generic
7 assertions to explain why a person of ordinary skill in
8 the art would have combined specific elements from
9 specific references in the way the claimed invention
10 does.

11 Therefore, in evaluating whether a claim
12 would have been obvious, you should consider whether TPV
13 has identified a reason that would have prompted a
14 person of ordinary skill in the field of the invention
15 to combine the requirements or concepts from the prior
16 art in the same way as in the claimed invention.

17 There is no single way to define the line
18 between true inventiveness on one hand, which is
19 patentable, and the application of common sense and
20 ordinary skill to solve a problem on the other hand,
21 which is not patentable. However, you should take this
22 into account such -- you should take into account such
23 factors as:

24 (1) whether market forces or other design
25 incentives may be what produced a change rather than

1 true inventiveness;

2 (2) whether the claimed invention applies
3 a known technique that had been used to improve a
4 similar device or method in a similar way;

5 (3) whether the prior art teaches or
6 suggests the desirability of combining elements claimed
7 in the invention;

8 (4) whether the claimed invention would
9 have been obvious to try, meaning that the claimed
10 innovation was one of a relatively small number of
11 possible approaches to the problem with a reasonable
12 expectation of success by those skilled in the art.

13 But you must be careful not to determine
14 obviousness using hindsight. Many true inventions can
15 seem obvious after the fact. You should put yourself in
16 the position of a person of ordinary skill in the field
17 of the invention at the time the claimed invention was
18 made, and you should not consider what is known today or
19 what is learned from the teaching of the patent.

20 The ultimate conclusion of whether a
21 claim is obvious should be based on your determination
22 of several factor -- several factual issues.

23 (1) you must decide the level of ordinary
24 skill in the field of the invention that someone would
25 have had at the time the claimed invention was made;

1 (2) You must decide the scope and content
2 of the prior art. In determining the scope and content
3 of the prior art, you must decide whether a reference is
4 pertinent or analogous to the claimed invention.

5 Pertinent or analogous prior art includes
6 prior art in the same field of endeavor as the claimed
7 invention regardless of the problems addressed by the
8 reference and prior art from different fields reasonably
9 pertinent to the particular problem with which the
10 claimed invention is concerned.

11 Remember that prior art is not limited to
12 patents and published materials but includes the general
13 knowledge that would have been available to one of
14 ordinary skill in the field of the invention.

15 (3) You must decide what difference, if
16 any, existed between the claimed invention and the prior
17 art.

18 Finally, you should consider any of the
19 following factors that you find have been shown by the
20 evidence.

21 Factors tending to show non-obviousness
22 include:

23 (1) commercial success of the product due
24 to the merits of the claimed invention;

25 (2) a long-felt but unsolved need for the

1 solution provided by the claimed invention;

2 (3) acceptance by others of the claimed
3 invention as shown by praise from others in the field of
4 the invention or from the licensing of the claimed
5 invention;

6 And (4) other evidence tending to show
7 non-obviousness.

8 Factors tending to show obviousness
9 include:

10 (1) independent invention of the claimed
11 invention by others before or at about the same time as
12 the named inventor thought of it;

13 And (2) other evidence tending to show
14 obviousness.

15 You may consider the presence of
16 commercial success a long-felt but unresolved need,
17 acceptance by others, or other evidence tending to show
18 non-obviousness as an indication that the claimed
19 invention would not have been obvious at the time the
20 claimed invention was made.

21 And you may consider the presence of
22 independent invention and other evidence tending to show
23 obviousness as an indication that the claimed invention
24 would have been obvious at such time.

25 Although you should consider any evidence

1 of these factors, the relevance and importance of any of
2 them to your decision on whether the claimed invention
3 would have been obvious is up to you.

4 TPV must prove by clear and convincing
5 evidence that a claimed invention was obvious. If you
6 find that a claimed invention was obvious, as explained
7 above, you must find that claim invalid.

8 I will now instruct you on damages. If
9 you find that TPV has infringed one or more valid claims
10 of Hitachi's asserted patents, you must determine the
11 amount of money damages to award to Hitachi.

12 By instructing you on damages, I do not
13 suggest that one or the other party should prevail.
14 These instructions are provided to guide you on the
15 calculation of damages in the event you find
16 infringement of a valid patent claim and thus must --
17 must address the damages issue.

18 The amount of damages must be adequate to
19 compensate Hitachi for the infringement, but it may not
20 be less than a reasonable royalty.

21 At the same time, your damages
22 determination must not include additional sums to punish
23 TPV or to set an example.

24 You may award compensatory damages only
25 for the loss that Hitachi proves by a preponderance of

1 the evidence was caused by TPV's infringement.

2 There are different types of damages that
3 a patent holder may be entitled to recover. In this
4 case, Hitachi seeks a reasonable royalty.

5 A reasonable royalty is defined as the
6 money amount Hitachi and TPV would have agreed upon as a
7 fee for the use of the invention at the time prior to
8 when the infringement began.

9 Whether the parties dispute a matter
10 concerning damages, it is Hitachi's burden to prove by a
11 preponderance of the evidence that Hitachi's version is
12 correct.

13 Hitachi must prove the amount of damages
14 with reasonable certainty but need not prove the amount
15 of the damages with mathematical precision.

16 However, Hitachi is not entitled damages
17 that are remote or speculative. The amount of damages
18 Hitachi can recover is limited to those acts of
19 infringement by TPV that occurred after Hitachi gave TPV
20 notice that they were allegedly infringing the asserted
21 patents.

22 Different notice dates may be applicable
23 for different patents. Actual notice means that Hitachi
24 communicated to TPV a specific charge of infringement of
25 the asserted patents by their televisions.

1 In addition, absent earlier notice,
2 service of a complaint in a lawsuit alleging patent
3 infringement normally provides notice. This notice is
4 effective as of the date given.

5 Hitachi has the burden of establishing by
6 the preponderance of the evidence that TPV received
7 notice of infringement on a particular date.

8 In this case, the parties agree that:

9 TPV received notice of the '375 patent on
10 May the 3rd, 2012, when Hitachi filed a complaint with
11 additional claims against TPV alleging infringement of
12 the '375 patent.

13 The parties dispute when TPV received
14 notice of the '497, '243, and '310 patents.

15 In this case, TPV received a letter from
16 Hitachi that identified the '497, '243, and '310 patents
17 on April the 28th, 2009.

18 Hitachi filed a complaint against TPV on
19 July the 22nd, 2010, alleging infringement of the '497,
20 '243, and '310 patents.

21 Your job is to calculate the damages from
22 the date TPV -- TPV received actual notice. You should
23 not award damages for any infringement by TPV occurring
24 before they first received notice of any patents that
25 you find to be valid and infringed.

1 A royalty is a payment made to a patent
2 holder in exchange for the rights to make, use, or sell
3 the claimed invention.

4 A reasonable royalty is the payment that
5 would have resulted from a negotiation between a patent
6 holder and the infringer taking place just before the
7 time when the infringing sales first began.

8 In considering the nature of this
9 negotiation, the focus is on what the expectations of
10 the patent holder and infringer would have been had they
11 entered into an agreement at that -- at that time and
12 acted reasonably in their negotiations.

13 However, you must assume that both
14 parties believed the patents were valid and infringed.

15 In addition, you must assume that the
16 patent holder and infringer were willing to enter into
17 an agreement. Your role is to determine what that
18 agreement would have been.

19 The test for damages is what royalty
20 would have resulted from the hypothetical negotiation
21 and not simply what either party would have preferred.

22 Evidence of things that happened after
23 the infringement first began can be considered in
24 evaluating the reasonable royalty but only to the extent
25 that the evidence aids in assessing what royalty would

1 have resulted from a hypothetical negotiation.

2 Although evidence of the actual profits
3 of an alleged -- an alleged infringer made may be used
4 to determine the anticipated profits at the time of the
5 hypothetical negotiation, the reasonable royalty may not
6 be limited or increased based on the actual profits or
7 lack of profits the alleged infringer may have made.

8 In determining the royalty that would
9 have resulted from the hypothetical negotiation, you may
10 consider real-world facts, including the following, to
11 the extent they are helpful to you:

12 (1) The royalties received by Hitachi for
13 licensing of the patents-in-suit proving or tending to
14 prove an established royalty.

15 (2) The rates paid by licensees for the
16 use of other patents comparable to the patents-in-suit.

17 (3) The nature and scope of the license,
18 as exclusive or non-exclusive, or as restricted or
19 non-restricted, in terms of territory or with respect to
20 whom the manufactured product may be sold.

21 (4) The licensor's established policy and
22 marketing program to maintain his or her patent monopoly
23 by not licensing others to use the invention or by
24 granting licenses under special conditions designed to
25 preserve that monopoly.

1 (5) The commercial relationship between
2 the licensor and licensee, such as whether they are
3 competitors in the same territory, in the same line of
4 business, or whether they are inventor and promoter.

5 (6) The effect of selling the patented
6 specialty in promoting sales of other products of the
7 licensee, the existing value of the invention to the
8 licensor as a generator of sales of his non-patented
9 items and the extent of such derivative or convoyed
10 sales.

11 (7) The duration of the patent and the
12 term of the license.

13 (8) The established profitability of the
14 product made under the patents, its commercial success,
15 and its current popularity.

16 (9) The utility and advantages of the
17 patented property over the old modes or devices, if any,
18 that had been used for working out similar results.

19 (10) The nature of the patented
20 invention, the character of the commercial embodiment of
21 it as owned and produced by the licensor and the
22 benefits to those who have used the invention.

23 (11) The extent to which the infringer
24 has made use of the invention and any evidence probative
25 of the value of that use.

1 (12) The portion of the profit or of the
2 selling price that may be customary in the particular
3 business or a comparable business to allow for the use
4 of the invention or analogous inventions.

5 (13) The portion of the realizable
6 profits that should be credited to the invention as
7 distinguished from non-patented elements, the
8 manufacturing process, business risks, and
9 significant -- or significant features or improvements
10 added by the infringer.

11 (14) The opinion and testimony of
12 qualified experts.

13 (15) The amount that a licensor (such as
14 Hitachi) and a licensee (such as TPV) would have agreed
15 upon (at the time the infringement began) if they had
16 been reasonably and voluntarily trying to reach an
17 agreement; that is, the amount which a prudent
18 license -- licensee who desired, as a business
19 proposition, to obtain a license to manufacture and sell
20 a particular article embodying the patented invention
21 would have been willing to pay as a royalty and yet be
22 able to make a reasonable profit and which amount would
23 have been acceptable by a prudent patentee who was
24 willing to grant a license.

25 No one factor is dispositive, and you can

1 and should consider the evidence that has been presented
2 to you in this case on each of these factors.

3 You may also consider any other factors
4 which, in your mind, would have increased or decreased
5 the royalty the infringer would have been willing to pay
6 and the patent holder would have been willing to accept,
7 acting as normally prudent business people.

8 The final factor establishes the
9 framework which you should use in determining a
10 reasonable royalty; that is, the payment that would have
11 resulted from a negotiation between the patent holder
12 and the infringer taking place at a time prior to when
13 the infringement began.

14 We will now hear the closing arguments
15 from the attorneys in this case. The Plaintiff may
16 proceed with its opening closing arguments.

17 MR. BLACK: Thank you, Your Honor.

18 On behalf of Hitachi, I want to thank
19 you, Members of the Jury, for spending a week with us
20 and hearing our case. This is the closing argument,
21 which is our opportunity to sum up the evidence and to
22 show you that we made good on the promise that
23 Mr. Carroll made when he stood up on Monday and said we
24 would prove that we would win the race to credibility.

25 I'll spend the next few minutes